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10 Attorneys for Defendant
11 INTERNATIONAL BUSINESS
12 MACHINES CORP.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 DAVID A. KAVITZ,

16 Plaintiff,

17 v.

18 INTERNATIONAL BUSINESS MACHINES
19 CORPORATION, a New York corporation,

20 Defendant.

Case No. CV 08 5591 SBA

21 **DECLARATION OF HUGH**
22 **FLANNERY IN SUPPORT OF**
23 **MOTION TO TRANSFER VENUE**

24 Complaint Filed: December 16, 2008
25 Trial Date: None set

26 I, Hugh Flannery, do hereby declare:

27 1. I am a citizen of the United States of America, and currently reside in New York
28 State. I have worked for International Business Machines Corporation ("IBM") for
approximately seven years. I started working for IBM when IBM acquired Informix Data
Software ("Informix") in 2001. When I started working for IBM, I was a sales manager. I held
that position for approximately a year and a half. Then, I was promoted to my current position
of Business Unit Executive. I have personal knowledge of the matters set forth below, and if
called to do so, I could and would testify as follows.

2. IBM is a world leader in business intelligence and provides computer software
that enables companies to improve business performance by enhancing business decision-

1 making at all levels of an organization. IBM is a Delaware corporation with its U.S.
2 headquarters located in Armonk, New York.

3 3. Plaintiff David Kavitz ("Kavitz") also started working for IBM when IBM
4 acquired Informix. IBM hired Kavitz as a sales representative and assigned him to IBM's
5 Central Region. IBM's Central Region spanned North Dakota, South Dakota, Nebraska,
6 Minnesota, Iowa, Wisconsin, Illinois, Michigan, Indiana, Kentucky, Ohio, Western
7 Pennsylvania, West Virginia, and the greater St. Louis area.

8 4. From October 2005 to January 2007, Kavitz reported directly to Andre Temidis
9 ("Temidis"), Sales Manager for the Central Region. I believe that when he supervised Kavitz,
10 Temidis resided in New York State and that Temidis still resides in New York State.

11 5. In 2006, I supervised Temidis, which made me Kavitz's second line manager. I
12 knew that in 2006, Kavitz worked out of IBM's office in Austin, Texas and that his main client
13 was Motorola. I also knew that Motorola's headquarters were in Illinois.

14 6. In 2006, IBM presented Kavitz with an Incentive Plan Letter ("The Plan")
15 outlining the sales goals IBM expected Kavitz to meet. The Plan included the following
16 language:

17 IBM management reserves the right to review and, at its sole
18 discretion, adjust incentive payments associated with transactions:
19 (1) which are disproportionate when compared with the territory
20 opportunity or quota size; or (2) for which the incentive payments
are disproportionate when compared with the individual's
performance contributions toward the transactions.

21 (hereinafter referred to as "Significant Transaction Clause").

22 7. Kavitz had a sales quota of approximately \$1.7 million in 2006. Kavitz's sales
23 quota reflected the amount of business IBM expected Kavitz to bring in during 2006.

24 8. In 2006, IBM negotiated a large transaction with Motorola. Multiple IBM
25 employees assisted with this transaction, including Kavitz. For the Motorola deal, Kavitz did not
26 travel to California or transact business in California. Kavitz's sales efforts mainly occurred in
27 Texas and Illinois.

11 11. I know that Kavitz currently works out of one of IBM's Georgia offices.

14 Executed in NYC, New York, on March 27, 2009.

Hugh Flannery
Hugh Flannery